UNITED
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General Assembly
Security Council

Distr.
GENERAL

A/49/278
S/1994/876
27 July 1994
ENGLISH
ORIGINAL: SPANISH

GENERAL ASSEMBLY
Forty-ninth session
Item 152 of the provisional agenda*
REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

SECURITY COUNCIL
Forty-ninth year

Letter dated 25 July 1994 from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General

Spain has firmly supported the principles and objectives of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, ever since that Tribunal was established by Security Council resolution 827 (1993), of 25 May 1993.

Therefore, in accordance with the provisions of paragraph 4 of resolution 827 (1993), and with a view to giving effect to that resolution and to the Statute of the Tribunal, the Spanish Parliament approved, and His Majesty the King promulgated, on 1 June, Organization Act 15/1994, concerning cooperation with the International Tribunal.

I am sending you attached the text of Organization Act 15/1994 with the request that you kindly arrange for its publication as an official document of the General Assembly and the Security Council.

(Signed) Juan A. YAÑEZ-BARNUEVO

* A/49/150.

ANNEX

Organization Act 15/1994 adopted by the Spanish Parliament on 1 June 1994

I. General provisions

OFFICE OF THE HEAD OF STATE

12552 ORGANIZATION ACT 15/1994 of 1 June on cooperation with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia

JUAN CARLOS I

KING OF SPAIN

To all who have the knowledge of these presents

Be it known: That the Courts have enacted, and I hereby approve, the following Organization Act:

STATEMENT OF REASONS

By its resolution 827 (1993), the United Nations Security Council established an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia, and at the same time adopted the Tribunal's Statute.

Since the enabling provision underlying the resolution is Chapter VII of the Charter of the United Nations, there is no doubt that it is legally binding for all States in this international area.

Paragraph 4 of the resolution places upon all States the obligation to take any measures necessary under their domestic law to comply with the resolution and implement the Statute. It is not a matter of recognizing the competence of the Tribunal, as is customary in the case of other international tribunals, since such competence erga omnes already exists; rather, it is a question of adopting appropriate domestic measures, bearing in mind its special legal basis, which is a resolution of an international organization and not an international treaty.

The Act is based on a pre-existing body of conventional or customary law, the so-called rules of humanitarian law, embodied primarily in the Geneva Conventions or the Genocide Convention. The general view is that this conventional law has become part of customary law.

Since, from a material standpoint, much of the Statute is self-executing, the Act makes provision for its implementation only in respect of those matters which our Constitution stipulates must be the subject of Organization Acts.

Article 3 designates the Ministry of Justice as the central authority responsible for external relations with the Tribunal, while domestic judicial functions are concentrated in the National High Court, which already has exclusive competence in matters relating to extradition, the transfer of jurisdiction and the transfer of proceedings. All this is, of course, without prejudice to the general competence of the Ministry of Foreign Affairs and the domestic competence, where applicable, of the military courts.

Article 4 covers situations involving concurrent jurisdiction, including military jurisdiction, thus providing procedural complements to the principle of the primacy of the International Tribunal laid down in article 9 of the Statute. Furthermore, in keeping with this, the principle of non bis in idem is developed, although no reference is made to article 10, paragraph 2 (b), of the Statute since the situations envisaged would be unlikely to occur in Spain.

Article 6, guided by the Statute, deals with arrest. Speaking in the abstract, there should be no doubt as to the lawfulness of an arrest, on the one hand, because double charges normally will have been lodged against the accused and, on the other hand, because, in addition to the unilateral rules of international competence, there is a rule governing competence in this regard deriving from the Statute itself.

Articles 19 and 20 of the Statute constitute a significant departure from our rules on extradition in that they make no mention of extradition at all but refer to surrender or transfer of the accused to the International Tribunal. The report of the Secretary-General of the United Nations (para. 102) appears to clearly exclude extradition proceedings. This provision reflects previous views that Spain put forward regarding the simplification of extradition at the Funchal Conference of Ministers of Justice of the European Communities and which are currently being considered in the framework of the Coordination Committee of Senior Officials established under Title VI of the Treaty on European Union.

From all these factors it also appears that contumacious judgements are rejected.

Article 7.3 recognizes extraterritorial jurisdiction for the prosecution of offences of perjury before the International Tribunal, thus filling a lacuna in our laws, although such an innovation has already been preceded by a provision to that effect in the Statute of the Court of Justice of the European Communities and the rules of procedure of the Court.

Concerning the enforcement of sentences, some provisions of article 8 may not be immediately enforceable, since they are contingent upon Spain's issuing a specific declaration of its willingness to accept convicted persons.

Article 1. Duty to cooperate

Spain shall cooperate fully with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (hereinafter referred to as "the International Tribunal"), established under resolution 827 (1993) of the Security Council of the United Nations.

Article 2. Bases

Cooperation shall be extended in accordance with the provisions of Security Council resolution 827 (1993), the Statute of the Tribunal, the present Act and, in the absence of specific provisions, the general criminal laws, both substantive and procedural.

Article 3. Competent authorities

1. Without prejudice to the competence of the Ministry of Foreign Affairs, the Ministry of Justice shall be the central authority responsible for considering requests for cooperation from the International Tribunal and other requests that may be submitted to it.

2. Each of the organs of the National High Court shall, within the areas of its jurisdiction, be exclusively responsible for cooperation with the International Tribunal.

Article 4. Concurrent jurisdiction

1. Where ordinary or military courts of Spain have jurisdiction under their respective organizational rules and rules of procedure to consider cases that fall within the scope of the Statute of the International Tribunal, they shall initiate or continue the judicial proceedings, as long as the International Tribunal does not prohibit them from doing so.

2. Upon receiving an application for prohibition, the judge or court shall suspend the judicial proceedings, and, without prejudice to their ability to continue to be seized of urgent proceedings, shall refer the case to the National High Court, which shall issue an order of prohibition in favour of the International Tribunal. The military judicial organs, for their part, shall refer the case, through the Central Military Court, to the National High Court.

3. The application may be rejected only where the matter does not come under the temporal or territorial jurisdiction of the International Tribunal.

4. No Spanish judge or court may create a conflict of jurisdiction with the International Tribunal. They shall confine themselves to stating the reasons that in their estimation form the basis of their own competence.

Article 5. Principle of "non bis in idem"

Persons tried in Spain for an offence under ordinary law may also be tried by the International Tribunal if the act is classified by the International Tribunal under the categories contained in the Statute of the International Tribunal.

Article 6. Arrest and transfer

1. Any person resident in Spain against whom an indictment has been confirmed shall, pursuant to an arrest warrant of the Trial Chamber of the International Tribunal, be taken into custody and informed of the charges against him by the central examining court of the National High Court.

2. The National High Court shall approve the transfer, without the need for formal extradition proceedings, and shall specify in its decision the maximum length of the pre-trial detention stipulated in Spanish law.

Article 7. Appearance before the International Tribunal

1. Persons summoned to appear before the International Tribunal as witnesses or experts shall be under the same obligation to appear as that provided for in Spanish law.

2. The Ministry of Justice shall advance the expenses necessary for such appearance.

3. Perjury before the International Tribunal shall be treated as the offence of perjury under criminal law and may be tried in Spain at the request of the International Tribunal.

4. Spain shall guarantee the immunity of persons in transit for the purpose of appearing before the International Tribunal.

Article 8. Enforcement of sentences

1. Should Spain declare, pursuant to article 27 of the Statute of the International Tribunal, its willingness to accept convicted persons, it shall specify in so doing that it will follow the sentence enforcement procedure and that such sentence may not exceed the maximum provided for in Spain for penalties involving deprivation of liberty.

2. The prisons oversight judges shall inform the National High Court of any significant incident regarding the enforcement of the sentence. The National High Court shall in turn inform the Ministry of Justice.

3. Whenever any pardon or commutation of sentence proceedings are initiated, the Ministry of Justice shall so inform the International Tribunal, since no decision can be taken until the International Tribunal rules on the matter, and the pardon or commutation may be denied if the International Tribunal so decides.

Single final provision. Duration

This Act shall remain in force until the International Tribunal is dissolved, without prejudice to the effects deriving from the implementation of articles 7.3 and 8.

Accordingly,

I hereby order all Spaniards, both individuals and authorities, to observe and enforce this Organization Act.

Madrid, 1 June 1994

JUAN CARLOS R.

FELIPE GONZALEZ MARQUEZ
Prime Minister

UNITED NATIONS **A S**

General Assembly
Security Council

Distr.
GENERAL

A/48/974
S/1994/877
27 July 1994

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-eighth session
Agenda item 42
THE SITUATION IN BOSNIA
AND HERZEGOVINA

SECURITY COUNCIL
Forty-ninth year

Letter dated 27 July 1994 from the Chargé d'affaires a.i. of the Permanent Mission of Bosnia and Herzegovina to the United Nations addressed to the Secretary-General

I have the honour to transmit the attached letter from my Prime Minister, Haris Silajdzić, addressed to you.

May I ask for your kind assistance in circulating the present letter and its annex as a document of the General Assembly, under agenda item 42, and of the Security Council.

(Signed) Ivan Z. MISIĆ
Ambassador
Deputy Permanent Representative

ANNEX

Letter dated 27 July 1994 from the Prime Minister of Bosnia and Herzegovina to the Secretary-General

Allow me to draw your attention to, and solicit your assistance in, alleviating the grave humanitarian conditions of our population in the United Nations-designated "safe area" of Bihac.

As you are aware, all United Nations humanitarian convoys to the region have been blocked since 21 May. Since then, the people of Bihac have suffered under increasingly desperate living conditions.

In the light of the fact that the citizens of the "safe area" of Bihac had been receiving half of the requisite humanitarian aid before this blockade was imposed, large amounts of food and medicine are needed to compensate this shortage. Our Government asks for your assistance in facilitating the immediate delivery of food and medicine by UNHCR land convoy and, more urgently, owing to the expected Serbian intransigence, by air drops.

(Signed) Haris SILAJDZIĆ
Prime Minister

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Security Council

Distr.
GENERAL

S/1994/878
27 July 1994
ENGLISH
ORIGINAL: FRENCH

Letter dated 25 July 1994 from the Chargé d'affaires a.i.
of the Permanent Mission of Tunisia to the United Nations
addressed to the Secretary-General

I have the honour to transmit to you herewith the text of the appeal made on 23 July 1994 by Mr. Zine El Abidine Ben Ali, President of the Republic of Tunisia and current President of the Organization of African Unity, concerning the situation in Rwanda.

I should be grateful if you would arrange to have this letter and the annex circulated as a document of the Security Council.

(Signed) Holla BACH TORJI
Chargé d'affaires a.i.

Annex

[Original: Arabic]

Appeal made on 23 July 1994 by the President of the Republic of Tunisia and current President of the Organization of African Unity

The tragedy currently being played out in Rwanda as a result of the distressing events experienced by that fraternal African country represents an almost unparalleled human disaster.

The tragedy is being exacerbated by the daily rise in the number of victims, the terrible increase in the number of refugees and deportees and the appalling spread of famine, disease and epidemics. The situation is the cause of the gravest concern, and a challenge to the conscience of the world.

At this critical time, I implore the fraternal people of Rwanda in its entirety to strive to overcome this trial, in a spirit of solidarity and reconciliation, and in the country's national interest.

I am also addressing a most urgent appeal to the international community and every country in it, together with regional and international organizations and humanitarian agencies, to work together in an urgent initiative to provide whatever aid is necessary to save the Rwandan people, our brothers, and to share in the alleviation of this tragedy.

Achieving this aim will certainly be easier if the international community takes every step necessary to send to Rwanda and widely deploy there, as quickly as possible, an international peace-keeping force, to work towards establishing security and unity in this fraternal country.

UNITED
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Security Council

Distr.
GENERAL

S/1994/879
26 July 1994

ORIGINAL: ENGLISH

REPORT OF THE SECRETARY-GENERAL ON THE ESTABLISHMENT OF THE COMMISSION OF EXPERTS PURSUANT TO PARAGRAPH 1 OF SECURITY COUNCIL RESOLUTION 935 (1994) OF 1 JULY 1994

I

1. In the Statement by the President of the Security Council of 30 April 1994 (S/PRST/1994/21), the Council condemned all breaches of international humanitarian law in Rwanda, particularly those perpetrated against the civilian population, and recalled that persons who instigated or participated in such acts were individually responsible. It further recalled, in that context, that the killing of members of an ethnic group with the intention of destroying such group, in whole or in part, constituted a crime punishable under international law. By that Statement, I was requested, inter alia, to make proposals for investigation of the reports of serious violations of international humanitarian law during the conflict.

2. In its resolution 918 (1994) of 17 May 1994, the Security Council reiterated its condemnation of the continued killing of civilians with impunity, and recalled that such killings constituted a crime punishable under international law. In paragraph 18 of that resolution, the Council requested me to present a report as soon as possible on the investigation of serious violations of international humanitarian law committed in Rwanda during the conflict. In its resolution 925 (1994) of 8 June 1994, the Council noted with grave concern the reports indicating that acts of genocide had occurred in Rwanda and recalled that genocide constituted a crime punishable under international law.

3. In my report on the situation in Rwanda of 31 May 1994 (S/1994/640), I noted that massacres and killings were continuing in a systematic manner throughout Rwanda, and indicated that only a proper investigation could establish the facts and definite culpability. In paragraph 36 of that report, I concluded, on the basis of the findings and evidence of the special mission to Rwanda, that there could be little doubt that the large-scale killings of communities and families belonging to a particular ethnic group constituted genocide.

4. By paragraph 1 of its resolution 935 (1994) of 1 July 1994, the Security Council requested me to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse information submitted pursuant to

the said resolution, together with such further information as the Commission of Experts may obtain through its own investigations or the efforts of other persons or bodies, including the information made available by the Special Rapporteur of the Commission on Human Rights on Rwanda, with a view to providing me with its conclusions on the evidence of grave violations of international humanitarian law committed in the territory of Rwanda, including the evidence of possible acts of genocide.

5. The present report is submitted pursuant to the request contained in paragraph 3 of Security Council resolution 935 (1994).

II

6. Members of the Security Council may recall that a parallel initiative has been taken by the Commission on Human Rights. In its resolution S-3/1 of 25 May 1994, the Commission requested its Chairman to appoint a Special Rapporteur to investigate at first hand the human rights situation in Rwanda and to receive relevant, credible information on the human rights situation from Governments, individuals and intergovernmental and non-governmental organizations, including on the root causes and responsibilities for the recent atrocities. The Commission requested the Special Rapporteur to visit Rwanda and report on the human rights situation in that country, including recommendations for bringing violations and abuses to an end and preventing future violations and abuses. The Special Rapporteur was also requested to gather and compile systematically information on possible violations of human rights and acts that may constitute breaches of international humanitarian law and crimes against humanity, including acts of genocide, in Rwanda and to make that information available to me. The Special Rapporteur presented his report on the situation of human rights in Rwanda on 29 June 1994 (E/CN.4/1995/7).

7. In establishing the Commission of Experts, as requested by the Security Council, I have taken note of the similarity between the mandates entrusted to the two investigative bodies. With a view to avoiding unnecessary overlapping and to ensuring maximum cooperation between the two bodies, I have decided to establish the Commission of Experts in a way that would maximize the efficient use of scarce resources and reduce costs. I expect that the Special Rapporteur of the Commission on Human Rights will cooperate closely with the Commission of Experts and provide it with all the information at his disposal. I shall take the necessary administrative steps to ensure continuing collaboration between the two bodies.

8. The terms of reference of the Commission of Experts, as set out in Security Council resolution 935 (1994), will be to examine and analyse the information submitted pursuant to the said resolution, together with such further information as the Commission of Experts may obtain through its own investigations or the efforts of other persons or bodies, including the information made available by the Special Rapporteur of the Commission on Human Rights on Rwanda, with a view to providing me with its conclusions on the evidence of grave violations of international humanitarian law committed in the territory of Rwanda, including the evidence of specific acts of genocide. Given the urgency of the matter, I hope that that report will be submitted well within

four months of the establishment of the Commission of Experts as envisaged by the resolution, and in any event not later than 30 November 1994.

9. In considering how best to bring about an early report to the Security Council, it is envisaged that the work of the Commission of Experts will be in two stages. In a first stage, the members of the Commission will review and update the information that is available from all sources and carry out its own investigations in Rwanda to complement those already undertaken by the Special Rapporteur. That task should be accomplished within the first weeks of the Commission's existence.

10. The second stage of the Commission's work will be to draw up its conclusions on the evidence of specific violations of international humanitarian law, and in particular acts of genocide, on the basis of which identification of persons responsible for those violations could be made. In the light of these conclusions, the Commission will examine the question of the jurisdiction, international or national, before which such persons should be brought to trial.

11. I have, therefore, decided to establish a Commission of Experts, to be composed, in the first instance, of three members, one of whom will be designated, by me, as the Chairman. In selecting the members, I will take into account their qualifications in the areas of human rights, humanitarian law, criminal law and prosecution, as well as their integrity and impartiality. I shall notify the Security Council shortly of my appointments. I reserve the right to expand the membership of the Commission as necessary.

12. The members of the Commission will serve in their personal capacity.

13. The Commission will adopt its own rules of procedure. In the absence of consensus, decisions of the Commission will be taken by a majority vote.

14. For reasons of efficiency, practicality and economy, the Commission will be located at the United Nations Office at Geneva, where it will benefit from the resources of the office of the United Nations High Commissioner for Human Rights and its substantive, secretarial and administrative assistance. To the extent possible, and in order to avoid duplication, the Commission will also rely upon the resources already made available to the Special Rapporteur of the Commission on Human Rights.

15. Arrangements for the financing of the Commission of Experts will be made. In addition, I will take steps to establish a Trust Fund to receive voluntary contributions from States, intergovernmental and non-governmental organizations, as well as natural and juridical persons, to assist the Commission of Experts in carrying out its plan of work.

16. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 1/ will apply to the Commission and its members. The members of the Commission will have the status of experts on missions within the meaning of article VI of the Convention.

Notes

1/ Resolution 22 A (I).

UNITED
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Security Council

Distr.
GENERAL

S/1994/880
27 July 1994

ORIGINAL: ENGLISH

Draft resolution

The Security Council,

Recalling its resolutions 425 (1978) and 426 (1978) of 19 March 1978, 501 (1982) of 25 February 1982, 508 (1982) of 5 June 1982, 509 (1982) of 6 June 1982 and 520 (1982) of 17 September 1982, as well as all its resolutions on the situation in Lebanon,

Having studied the report of the Secretary-General on the United Nations Interim Force in Lebanon of 20 July 1994 (S/1994/856), and taking note of the observations expressed therein,

Taking note of the letter dated 13 July 1994 from the Chargé d'affaires a.i. of Lebanon to the United Nations addressed to the Secretary-General (S/1994/826),

Responding to the request of the Government of Lebanon,

1. Decides to extend the present mandate of the United Nations Interim Force in Lebanon for a further interim period of six months, that is until 31 January 1995;

2. Reiterates its strong support for the territorial integrity, sovereignty and independence of Lebanon within its internationally recognized boundaries;

3. Re-emphasizes the terms of reference and general guidelines of the Force as stated in the report of the Secretary-General of 19 March 1978 (S/12611), approved by resolution 426 (1978), and calls upon all parties concerned to cooperate fully with the Force for the full implementation of its mandate;

4. Reiterates that the Force should fully implement its mandate as defined in resolutions 425 (1978), 426 (1978) and all other relevant resolutions;

5. Requests the Secretary-General to continue consultations with the Government of Lebanon and other parties directly concerned with the implementation of the present resolution and to report to the Security Council thereon.

UNITED
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Security Council

Distr.
GENERAL

S/1994/881
27 July 1994

ORIGINAL: ENGLISH

LETTER DATED 27 JULY 1994 FROM THE PERMANENT REPRESENTATIVE OF ARMENIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to inform you that on 27 July 1994 the defence ministers of Armenia and Azerbaijan and the commander of the Nagorny Karabakh army signed a cease-fire agreement reaffirming and formalizing the cease-fire agreement on the Nagorny Karabakh conflict mediated by the Russian Federation on 9 to 11 May 1994.

With this agreement the parties affirm their readiness to accelerate and intensify the negotiations during the month of August to sign a new agreement, which will entail the solution of military-technical issues and the deployment of the Conference on Security and Cooperation in Europe (CSCE) monitors and international security forces.

The parties are particularly obligated not to violate the cease-fire until the signing of the above-mentioned agreement. The agreement assumes cooperation between the international security forces and the CSCE monitors.

The signed version of the agreement was sent, on the one side, to the Minister for Defence of the Russian Federation, Pavel Grachev, the Minister for Foreign Affairs of the Russian Federation, Andrei Kozirev, and the Special Envoy of the President of the Russian Federation, Vladimir Kazimirov, and, on the other side, to the Chairman of the CSCE Minsk Conference, Ambassador Jan Eliasson.

It was significant that the final stage of negotiations for the agreement was achieved through immediate and direct contacts between the signatories.

The Ministry of Foreign Affairs of the Republic of Armenia places great significance on this agreement, since it formalizes the existing de facto cease-fire of the last 10 weeks, creating a historic opportunity to end the armed conflict.

I should be grateful if you would have the present letter circulated as a document of the Security Council.

(Signed) Alexander ARZOUMANIAN
Permanent Representative

UNITED
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Security Council

Distr.
GENERAL

S/1994/882
27 July 1994

ORIGINAL: ENGLISH

LETTER DATED 27 JULY 1994 FROM THE DEPUTY PERMANENT REPRESENTATIVE OF BOSNIA AND HERZEGOVINA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit the attached letter from my President, Mr. Alija Izetbegovic, addressed to Your Excellency.

May I ask for your kind assistance in circulating this letter as a document of the Security Council.

(Signed) Ivan Z. MISIC
Ambassador and
Deputy Permanent Representative

Annex

Letter dated 27 July 1994 from the President of the Republic of Bosnia and Herzegovina addressed to the President of the Security Council

I want to inform you that as of this morning, Radovan Karadzic has made good on his threat, and has totally closed down the "blue route" across Sarajevo airport.

Effectively, the siege of Sarajevo has never been lifted. However, with the closing down of the "blue route", the strangulation of Sarajevo has again been intensified. With that, access of solid fuel and building material for the reconstruction and reintegration of the city has been halted.

The aggressor alleges that our army is using this route for the transportation of weapons. These accusations are completely untrue, and the United Nations Protection Force (UNPROFOR), whose personnel inspect all traffic on this route, has stated that Karadzic's claims are unfounded. UNPROFOR, however, has taken no action to try to protect this corridor. UNPROFOR's inactivity is all the more unexplainable as it controls the entire corridor.

The strangulation of Sarajevo, aggravated with this act, imperils the peace process and threatens an expansion and intensification of the conflict.

I ask you, Mr. President, to convene an urgent session of the Security Council, where measures with the view of removing the Serbian aggressor's obstinacy towards this exhausted city should be prescribed.

Your support to the above-mentioned request would be most appreciated.

I ask for your kind assistance in circulating this letter as a document of the Security Council.

(Signed) Alija IZETBEGOVIC

UNITED NATIONS **A S**

General Assembly
Security Council

Distr.
GENERAL

A/48/975
S/1994/883
28 July 1994

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-eighth session
Agenda item 54
QUESTION OF CYPRUS

SECURITY COUNCIL
Forty-ninth year

Letter dated 27 July 1994 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

Further to my recent communication to Your Excellency of 21 July 1994 (A/48/972-S/1994/859), on the negative impact of certain statements by the leader of the Turkish Cypriot community, Mr. Rauf Denktash, and on a series of provocative activities of the legally invalid secessionist entity in the occupied areas of the Republic of Cyprus, I have the honour, upon instructions from my Government, to bring to your attention and denounce to the Security Council and the entire membership of the United Nations a host of new negative statements by the Turkish Cypriot leader. These statements firstly tend to deal a serious, to say the least, if not lethal blow to current efforts in making a fresh start in the search to promote a comprehensive solution to the question of Cyprus through the implementation of the United Nations resolutions. Secondly, these latest statements betray the intention of the Turkish Cypriot leader to spare no effort and miss no opportunity to declare to the world the real objectives of the Turkish side, which include the recognition of "sovereignty" for the occupation regime, as a precondition to any future talks, and the annexation of the occupied territory at an opportune moment to the occupying Power, Turkey, in violation of repeated resolutions, both of the Security Council and the General Assembly, calling for the respect and safeguard of the independence, sovereignty and territorial integrity of the Republic of Cyprus. Thirdly, such new statements point directly to the hidden intentions of the Turkish side not only to undermine, ab initio, the strengthening of your mandate and good offices mission relating to Cyprus, but also to prevent and render meaningless any efforts for a result-oriented negotiating process. As Mr. Denktash very clearly declared, in the long process of intercommunal talks not only have there never been any concessions on the part of the Turkish side but also no such concessions should be expected in the future. And, as if these and numerous other statements were not adequately manifesting an obviously negative message to all concerned, he categorically emphasized that unless

"sovereignty" for the illegal regime was recognized no talks should resume. He even precludes for a considerable time (until February 1995) any kind of talks, obviously as a delaying tactic, under the pretext of the expected so-called Presidential elections in occupied Cyprus. This deplorable attitude of the Turkish cypriot leader is reflected in statements quoted below:

1. According to the illegal Bayrak radio (21 July 1994):

> "During the intercommunal negotiations the Turkish side had never made concessions as regards the equality, sovereignty and Turkey's guarantorship rights, and will never do so in the future ... we will not make concessions ... it is time Turkey has to sit down and make a new assessment of some realities and make the world accept this new assessment. ... despite the fact that Turkey's Grand National Assembly has adopted a resolution against negotiating the confidence-building measures separately, I have difficulty to understand why the Government still continues the negotiations on the CBM's ... 80 per cent of the Turkish Cypriots will cast their votes favourably for unification with Turkey."

2. According to the Turkish Cypriot daily newspaper Kibris (22 July 1994):

> "The national cause will be maintained ... the matter of integration between Turkey and the Turkish Republic of Northern Cyprus was discussed ... the importance of a national decision on the subject when the time comes will have priority over the Government ... the time has come for a new assessment of the situation ... 80 per cent of the people favour the integration of the Turkish Republic of Northern Cyprus with Turkey and a referendum may be held on the matter if necessary ... the process on the package of confidence-building measures cannot be maintained ... the present state of affairs will not help the Turkish Cypriots establish peace, which will be based on the concept of sovereignty ... a new assessment of the situation has to be made and the concept of sovereignty has to be presented as a precondition."

3. According to the Turkish Cypriot daily Kibris (26 July 1994) as well as Vatan and Yeni Demokrat newspapers:

> "until our equality and sovereignty is recognized there is no point of talks".

4. According to the Anatolia news agency (26 July 1994):

> "I cannot continue the negotiations in view of the coming Presidential elections in seven-eight months ... the road to federation passes through equality and sovereignty."

Moreover, what is even more disturbing and indicative of Turkish intentions is that, in utter disregard and defiance of the international community, which in no uncertain terms has condemned the aggression against Cyprus, the Turkish Cypriot leader calls for a new assessment of realities and, in an arrogant manner obviously stemming from the impunity with which the unacceptable status quo, which, according to Your Excellency's assessment, "was established

through the use of force and is sustained by military strength" (S/26777 of para. 101 (c)), is being maintained, claims, through the support of the occupying Power, to impose upon the victim and the world the acceptance of the faits accomplis of Turkish invasion. Undoubtedly, the outburst of such an intransigent and most uncompromising attitude constitutes yet another manifestation of the "familiar scenario" and the lack of political will on the Turkish side as amply described in your report of 30 May 1994 (S/1994/629, paras. 52 and 53). No wonder, therefore, as to the underlying reasons for the absence of an agreed settlement in Cyprus for two decades since the Turkish invasion and the continuing occupation in Cyprus, despite so many efforts that had enjoyed the support of the Security Council and the international community, and despite some hopeful advances that at times had been registered only to be eventually thwarted by the uncompromising or deceptive tactics of the Turkish side.

In denouncing the above statements, the Government of the Republic of Cyprus remains firmly convinced that the Turkish Cypriot side is able to maintain such a negative attitude only because it has Turkey's full support in pursuance of its goal, which at this time is nothing else but the maintenance at present of the status quo and, in the long run, the recognition of the secessionist illegal regime, in violation of Security Council resolutions 541 (1983) and 550 (1984) which, inter alia, called for the withdrawal of the declaration of the purported secession and for the non-recognition by the international community of the purported State and for not facilitating or in any way assisting the aforesaid secessionist entity. It is, therefore, high time, and indeed it is long overdue, for the Security Council to adopt new and effective procedures that at long last will ensure implementation of its own decisions. Only then could progress be expected towards a comprehensive solution on the Cyprus problem.

I shall be grateful if the text of the present letter could be circulated as a document of the forty-eighth session of the General Assembly, under agenda item 54, and of the Security Council.

(Signed) Alecos SHAMBOS
Ambassador
Permanent Representative of
the Republic of Cyprus

UNITED
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Security Council

Distr.
GENERAL

S/1994/884
28 July 1994
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 27 JULY 1994 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to inform you that the violations of Iraqi national airspace committed by United States aircraft in order to carry out reconnaissance and cause provocation continued over the period 10 to 22 July 1994.

10 July 1994

Northern region: 15 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by two- and three-aircraft formations, centred over Mosul, Irbil, Dohuk, Tall Afar, Amadiyah and Aqrah.

11 July 1994

(a) Northern region: 15 sorties flown at speeds of 600 to 900 kilometres per hour at medium altitudes by single aircraft and two-aircraft formations, centred over Mosul, Irbil, Dohuk, Zakho, Tall Afar and Amadiyah.

(b) Southern region: 46 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Nasiriyah, Qal'at Salih, Samawah, Artawi, Busayyah and Salman.

12 July 1994

(a) Northern region: 21 sorties flown at speeds of 600 to 900 kilometres per hour at medium altitudes by single aircraft and two-aircraft formations, centred over Mosul, Irbil, Dohuk, Tall Afar, Ayn Zalah and Shaqlawah.

(b) Southern region: 40 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Nasiriyah, Samawah, Salman, Artawi, Busayyah, Ushbayjah and Jalibah.

13 July 1994

(a) Northern region: 15 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by two- and three-aircraft formations, centred over Mosul, Irbil, Dohuk, Tall Afar, Amadiyah, Zakho and Aqrah.

(b) Southern region: 26 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Nasiriyah, Samawah, Qal'at Salih, Artawi, Busayyah, Jalibah, Salman and Qurnah.

14 July 1994

Southern region: 41 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Basra, Nasiriyah, Qal'at Salih, Samawah, Jalibah, Artawi, Busayyah and the area to the south of Najaf.

At 1215 hours, a TR-1 reconnaissance aircraft flying at a speed of 600 kilometres per hour and at an altitude of 20,000 metres was detected over the Jabal Sanam area. It disappeared at 1520 hours over the Hafr al-Batin area in the direction of Saudi airspace.

15 July 1994

(a) Northern region: 15 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Mosul, Irbil, Dohuk, Amadiyah, Zakho and Aqrah.

(b) Southern region: 34 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Nasiriyah, Samawah, Artawi, Busayyah, Shatrah, Salman, Jalibah and Ushbayjah.

At 1425 hours a hostile aircraft dropped 10 heat flares to the south of the Qush area in Ninawa Governorate.

16 July 1994

Northern region: 18 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by two- and three-aircraft formations, centred over Mosul, Irbil, Dohuk and Zakho.

17 July 1994

(a) Northern region: 23 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Mosul, Irbil, Zakho, Dohuk, Tall Afar, Amadiyah and Ayn Zalah.

(b) Southern region: 26 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Nasiriyah, Samawah, Salman, Artawi, Busayyah and Jalibah.

18 July 1994

(a) Northern region: 27 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations,

centred over Mosul, Irbil, Dohuk, Tall Afar, Amadiyah, Zakho, Aqrah and Ayn Zalah.

(b) Southern region: 34 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Nasiriyah, Samawah, Qurnah, Artawi, Busayyah, Jalibah, Salman, Ushbayjah and Chabaish.

19 July 1994

Southern region: 42 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Nasiriyah, Samawah, Jalibah, Artawi, Busayyah, Salman, Qurnah and Ushbayjah.

At 1440 hours, a TR-1 reconnaissance aircraft was detected over the area to the south of Najaf, the area to the south of Diwaniyah, Samawah and Hamzah. It disappeared at 1520 hours south of the Salman area in the direction of Saudi airspace.

20 July 1994

(a) Northern region: 19 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Mosul, Irbil, Dohuk, Tall Afar, Amadiyah, Zakho and Ayn Zalah.

(b) Southern region: 30 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Nasiriyah, Salman, Jalibah, Samawah, Artawi and Busayyah.

22 July 1994

(a) Northern region: 23 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by two- and three-aircraft formations, centred over Mosul, Irbil, Dohuk, Zakho, Tall Afar, Amadiyah and Shaqlawah.

(b) Southern region: 34 sorties flown at speeds of 600 to 900 kilometres per hour and at medium altitudes by single aircraft and two-aircraft formations, centred over Nasiriyah, Samawah, Artawi, Busayyah, Salman, Jalibah and Chabaish.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/1994/885
28 July 1994

ORIGINAL: ENGLISH

REPORT BY THE SECRETARY-GENERAL CONCERNING THE CREDENTIALS OF THE DEPUTY REPRESENTATIVE AND THE ALTERNATE REPRESENTATIVES OF SPAIN ON THE SECURITY COUNCIL

Pursuant to rule 15 of the provisional rules of procedure of the Security Council, the Secretary-General wishes to report that he has received credentials signed on 11 July 1994 by the Minister for External Affairs of Spain stating that Mr. Arturo Laclaustra has been appointed deputy representative of Spain on the Security Council and Mr. Jorge Sanchez, Mr. Miguel Aguirre de Carcer and Mr. Alvaro Rodriguez alternate representatives.

In the opinion of the Secretary-General, these credentials are in order.

94-30703 (E) 280794 28/07/94

UNITED
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General Assembly
Security Council

Distr.
GENERAL

A/49/281
S/1994/886
28 July 1994
ENGLISH
ORIGINAL: SPANISH

GENERAL ASSEMBLY
Forty-ninth session
Item 42 of the provisional
agenda*
THE SITUATION IN CENTRAL AMERICA:
PROCEDURES FOR THE ESTABLISHMENT
OF A FIRM AND LASTING PEACE AND
PROGRESS IN FASHIONING A REGION
OF PEACE, FREEDOM, DEMOCRACY
AND DEVELOPMENT

SECURITY COUNCIL
Forty-ninth year

Note by the Secretary-General

The attached document contains the report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL) covering the period from 1 March to 30 June 1994. As will be recalled (see S/23999, para. 3), it was decided that the work of ONUSAL in relation to the San José Agreement on Human Rights (A/44/971-S/21541, annex) would continue to be the subject of a separate series of reports.

* A/49/150.

Annex

ELEVENTH REPORT OF THE DIRECTOR OF THE HUMAN RIGHTS DIVISION OF THE UNITED NATIONS OBSERVER MISSION IN EL SALVADOR (1 MARCH-30 JUNE 1994)

I. INTRODUCTION

1. The Peace Accords signed between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) assigned the Human Rights Division responsibility for carrying out the active verification of the human rights situation and for cooperating with national bodies in order to contribute to the improvement of mechanisms for protecting human rights and to help ensure respect for the rules of due process of law.

2. In this context, the Human Rights Division has been periodically providing the Secretary-General and, through him the Security Council and the General Assembly with information concerning human rights developments in El Salvador. Its reports have also contained a status report on the implementation of the other commitments set forth in the various agreements, particularly those concerning the establishment, reform or consolidation of the institutions responsible for the protection and monitoring of the legal guarantees of human rights. As the departure of the United Nations Observer Mission in El Salvador (ONUSAL) draws near, it is becoming urgent that these commitments should be honoured.

3. Accordingly, this report, which covers the months of March, April, May and June 1994, again contains an analysis of the functioning of some of the institutions which are part of the justice system in El Salvador - a subject on whose active verification the Human Rights Division has gradually placed increased emphasis - and of the process of legislative reforms deriving from the obligations contained in the Peace Accords.

II. ANALYSIS OF THE SITUATION FROM MARCH TO JUNE 1994

A. Overall assessment of the situation

4. In my tenth report to the Secretary-General (A/49/116-S/1994/385), I stated that the human rights situation from November 1993 to February 1994 showed "a certain improvement, in contrast to the serious problems warned of in the ninth report", an indication that the overall trends of the process seemed to be reasserting themselves. In the period covered by this report, these trends continued.

5. The 1993 period prior to the first and second months of electoral rounds, held during the period covered by this report, were marked by a climate of growing political violence, a trend which some thought might affect the electoral process. Except in a few isolated cases, however, the final stages of the electoral campaign were not disrupted by acts of violence.

6. None the less, the increase during recent months in violence related to common crimes has attained very disturbing proportions; the high crime indexes, particularly the proven existence of complex organized-crime networks, coupled with the impunity resulting from the inadequate functioning of the justice system, are currently the greatest obstacles to the effective exercise of human rights in El Salvador.

7. In this connection, I must express my particular concern at indications that active-duty members of the Armed Forces and the National Police are participating in criminal activities. This situation, in addition to its inherently serious implications for the establishment of the rule of law, could easily conceal or lead to the formation of structures which perpetrate political violence disguised as common crime. In this same vein, we must reiterate our concern at the growing presence of armed gangs which are the main perpetrators of various criminal activities in some rural areas of El Salvador. On a number of occasions, I have pointed out that the existence of such illegal groups is a latent threat to the enjoyment of human rights.

8. The Government has been taking appropriate measures to deal with this difficult situation of lack of public safety. The President of the Republic, Mr. Armando Calderón Sol, not only has publicly acknowledged the existence of organized crime and vowed to combat it but has also been formulating a public-safety policy in the spirit of the peace agreements - that is to say, by giving his firm support to the National Civil Police as the sole organ legally responsible for ensuring the public peace and internal law and order.

9. A healthy expression of this political will is the recent deployment of the National Civil Police in the departments of La Paz, Cuscatlán, Santa Ana, the northern part of San Salvador, Ahuachapán and Sonsonate. The National Civil Police is now deployed in all departments of El Salvador, although in some departments its presence is confined to department capitals or major cities, while the National Police continues its activities in the other areas. During the period covered by this report, Mr. Victor Hugo Barrera was appointed Deputy Minister of Public Safety and Mr. Rodrigo Avila was appointed Director of the National Civil Police. They have reaffirmed their commitment to elaborating a reform process in the institution in order to ensure its maximum efficiency.

10. These positive responses by the Government also resulted in the President's decision to advance the date of the demobilization of the National Police to next December. His decision was precipitated by the involvement of an active-duty National Police officer in a bank hold-up, an incident which highlighted the participation of members of the National Police in organized crime. The President also decided to disband the Criminal Investigation Section of the National Police.

11. The number of complaints received by the Human Rights Division in the four-month period covered by this report was smaller than that recorded in the preceding four-month period (a decrease from 437 to 333). During the period analysed there was a monthly decline, with the number of complaints dropping from 100 in March to 90 in April, 82 in May and 61 in June. It should be stressed, however, that the number of complaints received by the Office of the National Counsel for the Defence of Human Rights is beginning to increase,

reflecting a natural and desirable transfer of the tasks of verification to that Office.

12. Moreover, it is not enough that the complaint figures should be lower during a given period. This is encouraging, but the situation is still precarious if State institutions do not have the professionalism and the degree of efficiency necessary to prevent and punish human rights violations.

13. A significant number of complaints received by ONUSAL contain evidence or information which clearly suggests political motives. The recent attempt on the life of former FMLN Commander and current Legislative Assembly Deputy María Marta Valladares (Nidia Díaz) and the assassinations of Jorge Bill Martínez Zaldaña, José Isaías Calzada Mejías and Heriberto Galicia Sánchez, all opposition members, give cause for concern, since they seem to indicate that there are still groups in El Salvador which resort to violence as a means of resolving political disputes. This is also reflected by the large number of threats against persons engaged in political activities.

14. The Legislative Assembly also adopted in the first round of voting a number of constitutional reforms which incorporate some of the recommendations formulated by the Human Rights Division and the Commission on the Truth. Other recommendations, however, went unheeded.

B. Review of active verification of the human rights situation

1. Right to life

15. The number of admissible right-to-life violations complaints during the period covered was lower than it had been in previous periods. The overall figure for the period was 96 complaints (compared to 144 in the preceding four-month period), including arbitrary executions (28), attempted arbitrary executions (9) and death threats (59).

16. It should also be stressed that the last few months were an election period, which might have caused an increase in politically motivated violations (or even complaints). That did not occur. The presence of the Joint Unit for the Investigation of Illegal Armed Groups having Political Motivations may well have acted as a deterrent.

17. While death threats have rarely reached the point of actual attempts on people's lives, whether it was because the perpetrators merely wished to intimidate or because the victim acceded to their demands, such threats clearly demonstrate that recourse to violence for political purposes is still a reality in El Salvador and therefore has a considerable effect on the process of consolidating the democratic political system agreed to in the Peace Accords.

(a) Arbitrary or extra-legal executions

18. During the four-month period covered by this report, 28 complaints of arbitrary executions were received.

19. Jorge Bill Martínez Zaldaña, a former combatant and a member of FMLN's Ejército Revolucionario del Pueblo (ERP), was murdered on 9 March at San Salvador by an unknown person who shot him in the face point-blank. The investigation conducted by the Human Rights Division revealed that there had been no robbery and that the possibility of a politically motivated murder could not be ruled out.

20. On the day of the second electoral round, José Isaías Calzada Mejías, an active member of FMLN's ERP who had served as President of a polling station, was murdered at Jicalapa. The main suspects are well-known members of the Alianza Republicana Nacionalista (ARENA). A political motive for the crime cannot be ruled out.

21. Adolfo Antonio García Hernández, alias "el Choco", a former combatant of FMLN and head of the "Recontras" gang, was murdered on 6 March on the highway that runs from Aguilares to Suchitoto. The suspects may be persons who take the law into their own hands, going by the name "Los Angeles Negros" (the Black Angels); alternatively the incident may have been a settling of scores within the armed gang.

22. Heriberto Galicia Sánchez, a candidate for alternate depute at San Miguel, representing the Movimiento Nacional Revolucionario (MNR) and leader of the INAZUCAR workers' union was killed by a shot in the head at San Miguel on 27 March. The investigation of the murder suggests that it was a politically motivated act.

23. On the night of 26 March in the municipality of Guatajiagua, department of Morazán, four persons wearing military uniforms and armed with M-16 rifles killed Santos Fidilecto Vásquez, his daughter Flor de María Vásquez Reyes and Santos Miguel Díaz, a workman. Robbery was ruled out as a motive.

24. On 15 May, in the municipality of San Sebastián Salitrillo, an officer of the National Police fired, for no apparent reason, at a vehicle carrying three youths, causing the death of one of them and severe injury to the spinal column of another.

25. The risk involved in giving the Armed Forces responsibility for public safety is exemplified by the death on 30 March of Jesús Molina Ramírez, caused by members of a military patrol. The victim stole a bicycle and fled, and the owner of the bicycle reported the robbery to a patrol from Military Detachment No. 4. The military personnel caught up with him and ordered him to halt; when he did not obey the order and increased his speed, a soldier fired three times, causing his death. The arbitrary execution was aggravated by the institutional cover-up of the act and the coercion of a witness to make him slant his testimony in favour of the soldiers.

(b) Attempted arbitrary executions

26. The most significant case was the second attempted arbitrary execution on 19 May, of María Marta Valladares, the former Commander Nidia Díaz of the Partido Revolucionario de los Trabajadores de Centroamérica (PTRC)-FMLN and now

a deputy in the Legislative Assembly. Unknown persons in an automobile with tinted glass windows attacked the deputy's personal vehicle with firearms at the entrance to her home, slightly wounding her driver and bodyguard Santiago Cruz Elías Pineda, who was the only person in the vehicle at the time. Last February, Cruz Elías was injured in an identical attack at the same place.

27. The type and method of the attack seem to indicate that it was a politically motivated act, even though questions remain about why the second attack on Marta Valladares' vehicle was made if the perpetrators knew that she was not in it. Despite the importance of the case, police and judicial investigations have had very little success in clearing up the two attacks. What is of serious concern in this case is the fact that there are significant leads which the National Civil Police's Division of Criminal Investigations seems deliberately to avoid pursuing.

28. Mario Armando Molina Molina, brother of the President of the Municipal Electoral Board of the department of La Libertad and a known member of FMLN, was the victim of an attempted murder whose alleged perpetrator is a National Police detective. A political motive has not been ruled out in the investigations.

(c) Death threats

29. During the period covered, 59 complaints of death threats were received, a figure which remains very high.

30. On 16 April, when Presidential candidate Rubén Zamora's driver, Luis Antonio Recinos, was preparing to pick him up at his home, two men armed with M-16 rifles arrived, forced the driver to get out of the vehicle and then escaped in it. The perpetrators aimed their weapons at Recinos, saying "We are better at using these than the Urban Commandos". The victim is convinced that the perpetrators were members of the military from the way they handled the weapons. The ONUSAL investigations classify the incident as an act of intimidation within the context of the second electoral round.

31. Other persons threatened during the period include:

- Professor of the Universidad Centroamericana (UCA) José Simeón Cañas, Xavier Obach, his wife Monserrat Elwes, and Jesuit priests of UCA (telephone threats). The incident has the earmarks of an act of intimidation;

- Protasio Villatoro, parish priest of the town of Berlín, who has participated very actively in community organizations (telephone threats);

- Father Orellana Castillo, parish priest of the municipality of Masahuat, department of Santa Ana, was threatened during his homily by an individual linked to the former mayor, a member of ARENA, who held the priest responsible for his electoral defeat.

32. On 6 June, in a telephone call made to a journalist by a group calling itself the "Comando Domingo Monterrosa", a press agency received threats against

various personalities, including the National Counsel for the Defence of Human Rights; the Attorney-General of the Republic; the president of the National Council of the Judiciary; Luis Gómez Zárate, who was a member of the Central Electoral Board; Juan Gerónimo Castillo, a member of the Joint Unit; and Jesuit priests.

2. Right to integrity of person

(a) Torture

33. During the period covered, three complaints of torture were received. In two of the cases, there was evidence that torture had actually occurred.

34. On 10 May, at San Miguel, members of the National Civil Police arrested Avilio Ricardo Martínez on charge of robbery; he was allegedly subjected to physical torture in order to make him confess the crime. The preliminary investigation seemed to establish that the victim had been tortured, but the investigation was seriously hampered by the fact that the victim was not given a medical examination in good time.

35. José Manuel Mejía Silva was the victim of various forms of physical torture inflicted by officers of the National Police at El Cocal, La Libertad, after his capture on 8 June.

(b) Ill-treatment

36. During this period, 33 complaints of ill-treatment were filed, an overall figure which is lower than that for the preceding period. None the less, the decreasing trend shown in the two preceding reports could be reversing itself, if the monthly increase registered is any indication: the number of complaints went from four in March to six in April, to 15 in May and down to eight in June.

3. Right to security of person

(a) Enforced or involuntary disappearances

37. In accordance with the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly, enforced disappearance is an act whereby "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law" (resolution 47/133 of 18 December 1992).

38. During the period in question, the Committee of Relatives for the Freedom of Persons Detained or Missing for Political Reasons in El Salvador (CODEFAM) reported the enforced disappearance of Luis Jaime Flores Parada and Luis Alberto

Landaverde Portal. The verification process did not disclose the necessary elements to prove the occurrence of such disappearances, as the term is defined by the United Nations. In particular, in neither of the two cases were there elements which constituted grounds for presuming any direct or indirect involvement by State officials. There is, on the other hand, some evidence in support of the hypothesis that these are cases of common criminality.

(b) Abductions

39. Fifteen complaints of abduction were received between March and June 1994. This seems to be related to the increase in the activities of armed gangs, although the figure is not truly representative, since most of the victims and their families avoid reporting the incidents to the authorities, or even to ONUSAL, for fear of reprisals by those gangs.

4. Right to personal liberty

40. During this period, 39 complaints of arbitrary detentions were received. It has been ascertained, however, that many detentions for petty misdemeanours are never reported by the victims. Thus there are a vast number of cases which are not registered. I have repeatedly pointed out that permanent eradication of this practice requires repeal of the former Police Act and the transfer of competence for such cases to justices of the peace. A check of the city jails in the central region revealed that in many cases of weekend detention for petty misdemeanours, the detainees remained in jail for 48 or 72 hours despite the fact that there are judges who work on rotating shifts in those localities.

5. Right to due process of law

41. Violations of due process of law, including the duty of the State under law to investigate and punish, continue to be the subject of a large number of complaints. The inability of the judicial system to determine responsibility for serious violations of human rights has been repeatedly proved by ONUSAL as a matter of deep concern.

42. Added to this fact is the knowledge of an alarming number of cases in which justice has been denied, apparently because of the political convictions of the victims. Another recurring problem is corruption among members of the judicial branch. For example, an investigation conducted by the Office of the National Counsel for the Defence of Human Rights at the Court of the Justice of the Peace in the First District, Santa Rosa de Lima, La Unión, found that a number of persons detained for public drunkenness and gambling had to pay 400 to 500 colones for their release. In other cases, the judge negotiated payments varying between 2,000 and 3,000 colones with the families of detainees.

6. Freedom of assembly

43. A municipal ordinance which entered into force on 18 June at San Salvador regulates the exercise and limitations of freedom of assembly and of the right

to demonstrate publicly in the city of San Salvador, establishing penalties for violators. Among other things, it prohibits the staging of public demonstrations on working days. Trade unions disobeying this provision have been fined.

44. Both the International Covenant on Civil and Political Rights and the American Convention on Human Rights recognize the right of peaceful assembly but allow restrictions "in conformity with the law" as being "necessary" in the interests of public security or public order. Thus, it is perfectly normal to regulate the conduct of public demonstrations, but their restriction must not go beyond what is essential, so as to make sure that the exception does not destroy the rule, which is the enjoyment of the right. In that connection, it would have to be determined whether less extensive measures would be capable of safeguarding public order.

7. The situation of violence and human rights

45. In the ninth report of the Human Rights Division, I drew attention to the fact that common acts of violence had increased sharply, by 300 per cent between January and September 1993, and I emphasized that this situation was linked to the non-implementation, delay or partial application of the Peace Accords:

> "First, the failure to confiscate military weapons in the possession of civilians ... Secondly, there are the difficulties, shortcomings and delays in disbanding the National Police and the efficient deployment of the National Civil Police with sufficient resources to fight crime. And thirdly, there are the limitations of the process of reintegrating former members of both the armed forces and FMLN. To that should be added the still-evident failure to investigate crime, which contributes to a sense of impunity." (A/49/59, para. 72)

46. According to a survey taken between 23 and 30 May 1994, most Salvadorians believe that crime is the country's major problem. One out of every four persons surveyed had been the victim of an assault since March.

47. One of the main indications of the growing tendency towards organized violence consists in cases of kidnapping for ransom and fatal assaults by organized criminal groups possessing military weapons.

48. These armed bands operating in El Salvador are usually composed of former members of the armed forces of El Salvador and the security forces and/or former sympathizers or combatants of FMLN who are, to varying degrees, in possession of military weapons and military-style uniforms. Because of the increasing activity of such armed groups or gangs in several areas of the country, they have become one of the factors generating the greatest amount of violence and instability.

49. As a result of active verification, three types of armed gangs have been identified. Those of the first type are small groups of individuals who had belonged to FMLN, the armed forces of El Salvador and the security forces; they commit common crimes, frequently using military weapons and occasionally

military-style or police-style uniforms, without any evident political motivation for their actions.

50. A second type of armed gangs, also composed of former members of the armed forces of El Salvador, FMLN and the security forces, have managed to exert control over a particular territory, especially in former areas of conflict. On occasion, they disguise the criminal nature of their actions with political rhetoric which alludes to the refusal to implement the Peace Accords, and especially the denial of the benefits to which they believe they are entitled because of their status as former combatants; they harshly criticize the leaders of ARENA, FMLN and the armed forces of El Salvador for this, proclaiming a resumption of the war.

51. A third type of gang has more complex characteristics and could evolve into a political-military organization. Such is the case of a gang in the Torola region, made up of no more than 40 former members of FMLN who do not recognize the national FMLN leadership. This gang has a hierarchical organization, its members remain together, and it is equipped with military supplies, uniforms and weapons. Its rhetoric is clearly political, and its watchword is the continuation of the war. Another such gang of about 40 men operates at San Simón. According to available information, most of them belonged to an anti-insurgency battalion attached to the Third Brigade, stationed at San Miguel, from which they are alleged to have obtained weapons. Some sources have even indicated that the head of this gang is an active member of that brigade.

52. Active verification by ONUSAL has shown that in some regions the lack of success in pursuing these gangs has been a consequence of the indifference and ineffectiveness of the National Police, as well as the delay in the deployment of the National Civil Police. This is the case at Suchitoto, department of Cuscatlán, a former area of conflict, where the absence or systematic inaction of National Police forces has enabled the armed gangs to expand their criminal activities of extortion, kidnapping and murder with impunity, while it has caused the people to lose all confidence in the police and to stop reporting crimes.

53. The National Police has attempted to make up for the lack of routine patrols in these areas by sporadically carrying out mass detention or round-up operations. During such operations, hundreds of officers comb the districts of these areas over several days, conducting searches, setting up checkpoints on the roads and detaining people. Some of these operations have, on balance, been harmful, from the standpoint both of the results achieved in fighting crime and of respect for human rights.

54. An example of this type of operation was carried out at the end of February in the villages near Guazapa. For three days, 200 police officers participated in a gigantic round-up, which in the end brought the detention of 21 persons, most of whom were accused of petty misdemeanours, and the seizure of one M-16 rifle and one grenade. The armed gangs were unaffected, since none of their members were detained and none of their weapons were seized. From a human rights viewpoint, the result of the operation was the arbitrary detention of

most of those captured, who were later released by the courts, and a number of cases of ill-treatment.

55. Some of ONUSAL's comments on the reasons why such police actions were ineffective and even counterproductive were taken into account by the authorities in order to guide the actions of the National Civil Police, a body which has registered some success in pursuing the armed gangs. The balance sheet on an operation carried out in the Guazapa region by this police force between 8 and 15 April in the presence of ONUSAL observers exemplifies the situation. Among its positive aspects, it sought the cooperation of the people and the FMLN leaders in the area, who supplied important information before and during the operation, and this led to the capture of a number of criminals.

56. Nevertheless, because of the lack of coordination with the courts in the area and the lack of sufficient evidence against the detainees, of the 56 persons captured during the operation and brought before the courts, about 50 were released for lack of evidence.

57. Failure to protect citizens, police passivity and lack of confidence in court proceedings, added to the fact that victims risk their lives or those of kidnapped family members if they identify criminals, have created a vicious circle resulting in impunity for the members of these gangs and the expansion of their violence against the people.

58. It has been verified that in some cases judges find themselves obliged to order the release of detainees for lack of evidence, since the police are unable to gather or submit proper evidence and the witnesses refuse to testify out of fear of reprisals by those gangs. In other cases, this situation arises because the police carry out the detention or the pre-trial proceedings in violation of the law, which invalidates the judicial process. Additionally, the situation of insecurity has seriously interfered with the proper administration of justice, since judges and court officials also have been subjected to threats and extortion by these gangs.

C. Active verification of other commitments established in the Peace Accords and having human rights components

1. The administration of justice

59. I have repeatedly stated that impunity is the main source of human rights violations in El Salvador. By the same reasoning, the lack of legal punishment for criminals is a factor contributing to the increase in crime. In El Salvador, this effect originates in the deficiencies of the institutions making up the justice system.

60. For the purpose of drawing up a table indicating the status of the functioning of the judicial branch, the Human Rights Division updated the basic data on the judicial status of 75 of the most significant cases of violations of the right to life known to ONUSAL, mentioned in the sixth to tenth reports. The table therefore contains the cases to which the judicial branch could reasonably

be expected to give special attention and the greatest possible care (see table 1).

Table 1

JUDICIAL STATUS OF 75 CASES OF VIOLATIONS OF THE RIGHT TO LIFE

	Arbitrary executions	Attempted arbitrary executions	Death threats	Total cases
No. of cases	47	14	14	75
		(percentages)		
Distribution of cases analysed	62.7	18.6	18.6	100
Judicial investigation	100	57	14.3	76
Police investigation	51	21.5	0	36
Violation of due process	47	25	0	49
Identification of perpetrators	34	7	7	24
Detention of suspects	17	7	0	12
Sentenced	0	0	0	0

61. The first relevant aspect concerns cases on which the State has not conducted any kind of investigation. Despite the gravity of these violations, almost 25 per cent of the cases analysed have not been brought before the judicial authorities, and consequently, no judicial proceedings for the investigation of the incident existed. Generally, the victims or their families had submitted the complaint to the ONUSAL offices but had failed to approach the judicial system because of mistrust, because of a belief that judicial proceedings were ineffective or because of fear. The perpetrators of these violations were never investigated and continued to enjoy total impunity.

62. Among the cases for which a judicial proceeding exists (75 per cent), in only 47 per cent had the police conducted pre-trial proceedings. In other words, in over half of judicial processes, there is no indication that the police have investigated the facts or provided any assistance to the judge. It has also been found that in many cases, even if a police investigation was conducted, it was superficial and not very enlightening, or its results were not submitted to the judge in good time.

63. Another aspect that should be stressed is that the deficiencies in police investigation are combined with failures that can be attributed to the judges

themselves, since violations of due process have been found in half of all judicial proceedings.

64. As a result of the omissions and deficiencies of extrajudicial and judicial investigation, the vast majority of violation cases remain unresolved, and the identities of those who ordered them and those who carried them out remain unknown, so that they remain free without having received any punishment whatever.

65. Of the total number of cases studied, in only 24 per cent was the identity of the alleged perpetrators known, and of them, only 12 per cent were in custody pending trial.

66. The update of these significant cases shows that the organs responsible for investigating these violations and seeing to it that their perpetrators are sentenced to the penalties imposed by law have proved to be extremely ineffective in getting results. From July 1992 until the time of writing of this report, no one has been tried or sentenced for having committed any of the 75 most serious cases of violations of the right to life reported to ONUSAL.

67. The unsatisfactory performance of the administration of justice which is indicated by the results of this study has consequences that give cause for deep concern. Although reforms have been undertaken in the judicial branch and the police forces, serious obstacles continue to prevent them from producing tangible results in the form of better administration of justice. At the same time, the sense of impunity enjoyed by criminals could encourage them to continue their activities without fear of discovery or punishment, in addition to reinforcing their victims' lack of confidence in the judicial system as a body that can protect, sanction and restore their rights.

68. The reform process in the judicial system must be accelerated. Thus, the new Supreme Court of Justice has a very great responsibility. There is an inescapable obligation to purge the judicial branch, on the basis of the evaluations conducted by the National Council of the Judiciary.

(a) The Institute of Forensic Medicine

69. In order that the judicial system may function satisfactorily and effectively, there are auxiliary and cooperating bodies in the administration of justice which, under the authority of the judges, are responsible for conducting investigations and drafting professional reports to enable the magistrates to make better decisions in judicial proceedings. The Institute of Forensic Medicine, as an agency cooperating with the administration of justice, is required to conduct investigations and prepare specialized or expert reports at the request of judges.

70. Under the law, the criminal court judge outranks the forensic physicians and the head of the forensic clinic. The competence of the Institute is limited to advising the judicial branch; its members are permanent judicial experts who are legally subject to the judge's instructions and supervision, with the obligation to conduct expert investigations as specifically ordered and to

report their conclusions solely to the competent judge within a specified period of time.

71. Thus, the Institute is under specific legal obligations of two kinds: respect for and subordination to the judicial branch, and appropriate technical capability to perform its duties of assisting in the administration of justice, an essential requirement of the right to be tried before a competent, independent and impartial court. However, ONUSAL has noted that in many cases, the Institute operates in open violation of the law.

72. This is true of the Institute's actions concerning the death of the FMLN leader Ernesto Véliz. Dr. Mateu Llort, Director of the Institute, unilaterally decided to make a public statement revealing the results of the toxicological examination carried out on the victim's body, when it was evident that death had been caused by the gunshot wounds inflicted by his attackers. That action seriously affected the impartiality of the justice system and violated the legal principle that toxicological analysis should be conducted with the judge's prior explicit authorization, in addition to other provisions concerning respect for the memory of the dead and professional confidentiality. A similar situation occurred in the case of the death of Lieutenant Colonel Julio Ramón Rivera, a United States officer, caused by an exploding grenade. On that occasion, the Judge of the Tenth Criminal Court of San Salvador was obliged to order the Director of the Institute, by a court order of 13 February 1994, not to divulge the results of the examinations.

73. An especially serious case was the murder of the former FMLN commander Oscar Grimaldi in August 1993. The alleged murderer, Salvador Guzmán, was found dead one day after the detention order was issued. The Institute refused to conduct the autopsy in a timely manner as ordered by the judge, and consequently it did not provide the judge with the relevant information for the judicial investigation. The explanation later given by the Director of the Institute to ONUSAL was that the HIV test conducted on Guzmán's body had been positive. This response is unsatisfactory, especially in view of the fact that in other cases of the same kind the Institute had proceeded with the autopsy.

74. The persistence of many of the problems involving inadequate scientific capability on the part of the Institute may stem from the lack of supervision by the Board of Overseers of the Medical Profession, whose legal responsibility it is to supervise the exercise of the medical profession. At the same time, it would be advisable that the Supreme Court of Justice, which appoints the Institute's director and forensic physicians, and for the judges of first instance, who have authority over the Institute, should exercise strict supervision over its functions.

(b) The reform process

75. The term of the members of the Supreme Court of Justice ended on 30 June 1994; the Legislative Assembly must therefore select new magistrates, in accordance with the provisions of the reformed Constitution.

76. The renewal of the Supreme Court of Justice will mark the start of a new procedure whereby the lists of candidates are submitted by the Federation of

Lawyers' Associations and the National Council of the Judiciary. In the first case, Human Rights Division observers monitored the election of the candidates, held on 12 March 1994 in the country's 14 departmental capitals. A second innovation in the procedure is that the appointment of the members of the Court requires the votes of two thirds of the deputies, which should provide an incentive for consensus among the parties represented in the Legislative Assembly.

77. The Human Rights Division and the Commission on the Truth have submitted a series of recommendations intended to introduce improvements in the justice system. It is hoped that the new Supreme Court will study their effective implementation.

78. Certain constitutional reforms that require ratification by the Assembly installed on 1 May for their entry into force were adopted on 29 April 1994. Those reforms include some of the proposed recommendations, but leave out others of particular importance. It would therefore be desirable to update the evaluation made in the eighth and tenth reports concerning the implementation of those recommendations, some of which are aimed at overcoming impunity.

(i) Decentralization of the functions of the Supreme Court of Justice

79. The recommendation that the ability to appoint and dismiss justices of the peace, Judges of First Instance and Magistrates of Second Instance should be transferred from the Supreme Court of Justice to the National Council of the Judiciary was not incorporated into the constitutional reform.

80. On the other hand, it was recommended that an independent body should be given competence to authorize and suspend the professional activities of attorneys and notaries, which is now held by the Supreme Court. The constitutional reform which is being ratified partially implements this recommendation, since it eliminates the Supreme Court's power to suspend attorneys and notaries, which in future will be under the jurisdiction of the recently established National Council of Lawyers and Notaries. However, the Court retains the right to authorize the professional activities of lawyers and notaries.

(ii) Habeas corpus and amparo

81. In order to provide citizens with greater access to constitutional guarantees, it was recommended that judges of courts of first instance should be granted authority to try and to rule in cases of habeas corpus and amparo.

82. The above-mentioned constitutional reform expanded the scope of habeas corpus to include detainees' rights to dignity and to physical, mental and moral integrity, assigning jurisdiction as follows: the Supreme Court of Justice shall examine applications for habeas corpus involving pre-trial proceedings against high government officials and review lower judges' decisions denying the release of detained or arrested persons; criminal courts of second instance shall consider habeas corpus cases involving court-ordered detentions, while courts of first instance shall consider habeas corpus cases relating to

administrative detentions or arrests by individuals. This formula is satisfactory.

83. The recommendation concerning amparo was not accepted, and therefore jurisdiction in that regard remains vested in the Supreme Court of Justice and will be distributed among its four chambers, depending upon the subject-matter, once the constitutional reforms have been ratified.

(iii) Extrajudicial confession

84. The constitutional reform agreed upon also includes the recommendation concerning the elimination of extrajudicial confession, since it makes such confession juridically invalid and states that only confessions made in the presence of a judicial authority shall be valid.

85. In May 1994, the Ministry of Justice submitted to the legislative assembly drafts of the new criminal code and the new code of criminal procedure. The draft code of criminal procedure outlaws extrajudicial confessions.

(iv) Administrative detention

86. The recommendation to shorten the period of administrative detention, the maximum for which is currently 72 hours, has not yet been considered under the constitutional and legislative reforms.

(v) National Council of the Judiciary

87. There are two recommendations on this subject. The first, under which the dismissal of members of the National Council of the Judiciary would require a two-thirds majority vote of the Legislative Assembly, has been implemented through a reform of the Assembly's own law and has also been incorporated into the recently agreed constitutional reforms. The second, designed to improve the composition and powers of the Council and the independence of the Judicial Training School, has not been considered.

(vi) Ratification of or accession to international instruments

88. It has been recommended that El Salvador should ratify or accede to a number of international instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador); the Optional Protocol to the International Covenant on Civil and Political Rights; and the American Convention for the Prevention and Punishment of Torture. It has also been recommended that El Salvador should recognize the competence of the Inter-American Court of Human Rights.

89. Thus far, the Legislative Assembly has dealt with and adopted only the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to a reservation with regard to the competence of the Committee against Torture to receive, investigate and rule on complaints concerning systematic violations and to a reservation with regard to the

competence of the International Court of Justice to consider disputes that may arise in respect of the interpretation or application of the Convention.

(vii) Compensation fund for victims of human rights violations

90. The only progress made with respect to this recommendation has been the constitutional recognition of the right to compensation in cases of delay of justice; however, that reform is awaiting ratification by the Legislative Assembly. The Human Rights Commission of El Salvador has submitted a legislative initiative to the Legislative Assembly on the establishment of the fund.

(viii) Code of Conduct for Law Enforcement Officials

91. The adoption of legislation regulating the conduct of law enforcement officials in terms of ensuring respect for human rights has been recommended. Some of the provisions of the United Nations Code of Conduct for Law Enforcement Officials have been incorporated into the new draft code of criminal procedure submitted in May 1994.

(ix) Arbitrary detention for petty misdemeanours

92. With a view to abolishing the practices of arbitrary detention for petty misdemeanours, it was recommended that the former Police Act of 1886 should be repealed, that jurisdiction over petty misdemeanours should be transferred to the judicial authorities and that the powers and functions of the Municipal Police should be expressly regulated. Those recommendations have not been implemented.

93. The constitutional reforms approved in April 1994 provide for the reduction of the maximum period of detention for administrative misdemeanours from 15 to 5 days.

(x) Office of the National Counsel for the Defence of Human Rights

94. The recently approved constitutional reform allocates not less than 2 per cent of the national budget to be distributed among the three institutions that make up the Office of the Public Prosecutor, including the Office of the National Counsel for the Defence of Human Rights, which constitutes progress in terms of providing the Office of the National Counsel with more funds.

(xi) Criminal and penitentiary legislation

95. As part of the process of reform of the law, particularly in order to build into it provisions guaranteeing respect for and protection of human rights, it has been recommended that a new criminal code, code of criminal procedure and penitentiary act should be adopted. Progress has been made concerning bills on the subject, and a number of consultations have been held with various public and private institutions of the country, but none of the legal texts have been considered by the competent committees of the Legislative Assembly, and no clear-cut timetable for their adoption has been established.

(xii) The Judicial Organ

96. With a view to guaranteeing the proper operation of the Judicial Organ, a new Career Judicial Service Act has been recommended, but it has not yet been adopted.

(c) The penitentiary system

97. The tenth report, referring to the serious riots at the San Francisco Gotera, Santa Ana and Sensuntepeque detention centres, pointed out, that "those serious incidents, as well as the tense situation prevailing in those and in other detention centres in the country, demonstrate that the situation in the prisons of El Salvador is critical and calls for action by the State to solve the structural problems in the prison system" (A/49/116-S/1994/385, para. 105).

98. Such violent reactions by inmates tend to reoccur as a result of the failure by the State to take action to improve the situation. On 21 May there was yet another riot, this time at the Mariona detention centre, which tragically resulted in the death of an inmate. The rioters, who demanded better conditions of imprisonment, called off the riot after negotiations. Nevertheless, five days later, on 26 May, violence erupted anew at that detention centre; a "truce" was negotiated thanks to the intervention of ONUSAL observers. The conflict was settled after the signing of a document that recorded the agreements reached following negotiations with the Minister of Justice and the Director of the Human Rights Division.

99. As a result of the serious situation in the prisons, special emphasis has been put on the task of active verification. To that end, agreement has been reached with the Director of Detention Centres as to the scope of the Division's work in the prisons and the facilities to be granted to ONUSAL observers to enter prison centres, where they would conduct a "minimum investigation" that would give them an overview of the situation in the prisons.

(d) Technical assistance provided by the Division to the judicial system

100. The ONUSAL Human Rights Division has agreed with the National Council of the Judiciary on a plan of 11 specialized workshop courses which will be held from August until late September 1994. At the seminars intended for Supreme Court justices, appeals-court judges, trial judges of first-instance criminal courts (120) and justices of the peace of the Republic (350), strategies for better application of the norms of international law in the area of human rights in El Salvador will be analysed. The courses will also be attended by appeals-court and court-of-first-instance prosecutors, as well as representatives of the Office of the National Counsel for the Defence of Human Rights.

101. The background document for the workshops will be a work on the protection of human rights and the administration of justice, which was prepared by national and international experts under the auspices of ONUSAL and is currently in the process of publication. It will be used together with a book of readings in human rights prepared by Salvadorian lawyers.

102. Both the National Council of the Judiciary and the Attorney-General have agreed to carry out a "delayed assessment" with the judges and prosecutors, whereby some time after the seminars, each official would submit what he considers to be his best ruling and judgement in terms of respect for human rights, as well as his decision on a hypothetical case. The resulting collection of such submissions could be extremely useful for the follow-up activities to these workshop courses.

2. Office of the National Counsel for the Defence of Human Rights

103. On various occasions, I have pointed out how important it is that El Salvador should strengthen the Office of the National Counsel for the Defence of Human Rights, the proper operation of which is crucial to monitoring respect for due process and to the effective protection and promotion of human rights in the country. On the basis of that firm belief, the attention of the Government of El Salvador and of the international community has been drawn to the need to provide the Office with adequate resources to fulfil its constitutional and legal mandate. In that connection, the Human Rights Division has on several occasions offered its technical assistance to the Office in a number of areas, especially in those that fall within the purview of both institutions.

104. Barely two years after its establishment, the Office has made progress, particularly with regard to the geographical expansion of its activities, which has enabled it to serve an ever-increasing number of people. During the period under review, the National Counsel for the Defence of Human Rights opened three branches of the Office, for the departments of Chalatenango, La Paz and La Libertad.

105. With the withdrawal of ONUSAL in the foreseeable future, the Office has to make greater efforts to consolidate its position, as well as to assess what benefits it can derive from making greater use of the experience accumulated by ONUSAL in the course of three years of active verification of human rights in El Salvador, a task which the Office would be required to assume fully upon conclusion of the Mission. In that connection, the Human Rights Division is providing and will continue to provide assistance to the Office. With that in mind, ONUSAL and the Office have agreed on a series of technical-cooperation activities regarding, among other matters, information on the acceptance and legal characterization of complaints, techniques of police and judicial investigation of complaints and the legal reasoning behind rulings.

106. In view of the need to share information, and taking into account the transfer of experience acquired by ONUSAL in the field, as well as the importance of making the people aware of the fact that after the process of international verification of human rights is concluded, the country will have a national body for the protection of human rights with wide-ranging powers to examine their complaints, it is envisaged that technical-assistance activities would be carried out under an operational approach which, while respecting the independence and the mandates of both institutions, would make possible the joint verification of human rights violations.

107. The Human Rights Division will keep the Secretary-General informed about the results obtained within this framework of cooperation with the Office, the strengthening of which is unquestionably essential to the exercise of human rights in El Salvador.

3. The armed forces

108. The Human Rights Division, in cooperation with the armed forces, has continued to implement the cooperation programme designed to promote the knowledge and observance of the new doctrine and the role of the armed forces in a democratic system, with special emphasis on the kind of military training that maintains respect for the rule of law and for human rights.

109. Consultations between the Ministry of Defence and the Human Rights Division have produced significant progress, in particular an agreement on the contents of a book of teaching materials currently in the process of publication.

110. As part of the cooperation in developing the new military doctrine, courses on military sociology and human rights have been developed at the General Gerardo Barrios Military Academy for its cadets. During the period under review, courses on human rights were also conducted at the Infantry School for student lieutenants in the advanced infantry course prior to promotion to the grade of captain. Lectures have also been delivered to commanders and officers in each brigade of the army on the principles of military sociology and military morality in a democracy.

111. While the progress achieved in the reform and restructuring of the armed forces as an institution devoted exclusively to national defence is undeniable, the evidence regarding the involvement of active-duty members of the armed forces in criminal activities is disquieting. Although this does not incriminate either the institution as a whole or its high command, it is essential to press the investigation forward and to try in the courts of ordinary justice the individuals involved.

4. The National Civil Police

112. In his latest report on ONUSAL to the Security Council, the Secretary-General stated that enhancing the civilian character of the National Civil Police and increasing its strength was one aspect of the Salvadorian situation that required "especially urgent attention" (S/1994/561, para. 102). The Secretary-General also stressed the "accelerated demobilization of the National Police".

113. In the tenth report of this Division to the Secretary-General, I pointed out, with respect to the difficult public security situation, that "crime control requires a major effort on the part of the State to adopt comprehensive, fundamental and well-planned measures to strengthen the National Civil Police so that they can fully carry out the duties entrusted to them in the peace agreements by the nation as a whole: to ensure public security as defined within the context of democratic values and bearing in mind its essential

relationship to the protection and defence of human rights and the rule of law" (A/49/116-S/1994/385, para. 127). I must reaffirm those comments on this occasion in view of the increase in criminal violence in the country.

114. Some sectors have blamed the prevailing lack of public security on the collapse of law and order as a result of the disbanding of the former national security bodies. The parties had been aware of this situation at the time of negotiating the Peace Accords, and that was why provision had been made for maintaining the National Police for a period of time and gradually replacing it with the National Civil Police. In this connection, the delay in the deployment of the National Civil Police within the deadlines provided for under the Peace Accords may have contributed to the increase in crime. Recent occurrences have underscored the desirability of accelerating the disbandment of the national police.

115. Such an occurrence was that of the morning of 22 June, when an armoured truck carrying money was held up by at least 15 armed individuals, some of whom wore National Police uniforms, in front of the offices of the Banco de Comercio, situated in the very centre of San Salvador. After murdering three members of the security force, the attackers made away with about 2.5 million colones (approximately $290,000). Lieutenant José Rafael Coreas Orellana, who served as Chief of the Investigations Section of the National Police and who was described by Victor Hugo Barrera, Deputy Minister of Public Security, as "an important participant in the hold-up", was arrested.

116. The attack highlighted the existence of hidden criminal elements within the National Police itself, which the citizens had suspected all along, and showed that the National Police was evidently not the most suitable body for giving the citizens security and confidence. Furthermore, for the first time, the President spoke about "organized crime" and the need to eradicate it from El Salvador.

117. During the period, ONUSAL received 147 complaints of human rights violations presumably perpetrated by officers of the National Civil Police. Investigation confirmed 58 of those complaints. A breakdown of the complaints is shown in table 2.

118. Most human rights violations committed by members of the National Civil Police result from ignorance of, or failure to apply, the laws which govern its activity. Arbitrary detentions, lack of due process, and failure to comply with the legal obligation to investigate and punish account for 62 per cent of verified complaints against that police body. However, ill-treatment, excessive use of force, and torture account for 30 per cent of the total. Of particular concern are two verified cases in which officers of the National Civil Police appear to be implicated in the use of torture to compel a detainee to confess.

119. I have repeatedly said that one of the factors which contribute to human rights violations by members of the National Civil Police may be the fact that the Special Anti-narcotics Unit (UEA) and the Commission for the Investigation of Criminal Acts (CIHD) were incorporated into the National Civil Police without any alteration or purging and without their members' having attended the regular courses given by the National Public Security Academy.

Table 2

COMPLAINTS AGAINST THE NATIONAL CIVIL POLICE DECLARED ADMISSIBLE BY ONUSAL

(1 November 1993 to 30 June 1994)

Complaints declared admissible	National Civil Police	Confirmed	By category	Percentage
VIOLATIONS OF THE RIGHT TO LIFE			1	
Arbitrary execution	3	1		1.7
Attempted arbitrary executions	0	0		0
Death threats	3	0		0
VIOLATIONS OF THE RIGHT TO INTEGRITY OF PERSON			19	
Torture*	5	4		6.9
Ill-treatment	25	10		17.2
Excessive use of force	16	5		8.6
VIOLATIONS OF THE RIGHT TO SECURITY OF PERSON			3	
Enforced disappearances	0	0		0
Abductions	0	0		0
Other threats	6	3		5.2
VIOLATIONS OF DUE PROCESS OF LAW				
PROCEDURAL GUARANTEES			3	
Right to be tried by a tribunal within a reasonable period of time	1	0		0
Right to defence	0	0		0
Right not to be coerced	3	3		5.2
Right to judicial review	0	0		0
RIGHT TO JUSTICE			5	
Legal obligation of the State to investigate and punish	23	5		8.6
Right to compensation	0	0		0

Complaints declared admissible	National Civil Police	Confirmed	By category	Percentage
VIOLATIONS OF THE RIGHT TO PERSONAL FREEDOM			27	
Arbitrary detentions	38	15		25.9
Arbitrary detentions for petty misdemeanours	7	5		8.6
Procedural guarantees	17	7		12.1
TOTAL	147	58	58	100

* Of these four cases, torture was verified in two, excessive use of force in one and police coercion in one.

120. The National Civil Police has taken some corrective measures to control acts which violate human rights. The entry into operation, during this period, of the units on disciplinary investigation and control, the appointing of their respective heads and the approval of the new disciplinary regulations, are actions designed for this purpose, although somewhat limited in their content.

121. During this period, the Human Rights Division carried out an extensive project in cooperation with the Office of the Director of the National Civil Police, with the goal of promoting and encouraging consolidation of the law-enforcement system within the framework of the Peace Accords. From February on, representatives of the Director of the Division held meetings almost every week with the Director of the National Civil Police and his advisers in order to exchange views regarding the problems which had been discovered. Beginning on 4 March, the heads of the units on control and disciplinary investigation, who had not been appointed until then, began to attend those working meetings.

122. The periodic meetings between the Division and the National Civil Police served as a forum for bringing up and discussing a broad range of important subjects, among them the development of specific lines of cooperation between the National Civil Police and the Division, on-site verification of complaints against the National Civil Police, the communication of verified accusations against its officers, the outline of a project for workshop courses for command personnel and the preparation and publication of the Guide to Rules and Procedures of the National Civil Police. These working meetings have made possible a continuous and flexible dialogue concerning complaints of violations attributed to members of the National Civil Police, which became more important during this period. Such willingness on the part of this law-enforcement agency to deal with the most important cases at the command level is a very positive contribution to the resolution of irregularities detected in the process of active verification, which thus becomes a tool for institutional support.

123. Some of the initiatives discussed in the periodic meetings have yielded positive results. Noteworthy among them is the Guide to Rules and Procedures of the National Civil Police. The Guide incorporates all the acts, rules and regulations essential to making the activities of the police conform to prevailing law and to respect for human rights. In addition to having been distributed to all command personnel of the National Civil Police, the Guide was used as the basic text in the specialized workshop courses for command personnel and lawyers of the National Civil Police, which were held throughout the country during the month of June.

124. The workshop courses on police procedure and human rights were conducted for inspectors, assistant inspectors, sergeants, corporals and even some ordinary officers of the National Civil Police during 6 three-day sessions held during the month of June at San Salvador, San Miguel, San Vicente and Santa Ana. The participants in the workshops were given an evaluation test by the Juridical Unit of the National Civil Police with the support of the Division. The evaluation demonstrated that even after those sessions, there were still some deficiencies in the knowledge of important rules, such as those concerning the invalidity of proceedings when no defence lawyer has been appointed for the offender and the appointment of the competent judge. On the other hand, there was a good knowledge of the rules for official entry and search of a dwelling (court order, flagrante delicto, etc.) and mandatory investigation. It also became evident that the higher-grade police officers, especially sergeants and corporals, assigned to the interior of the country had a lower level of preparation than those in the greater San Salvador area, where both the command personnel and the sergeants and corporals were rated as "good" or "excellent". The Human Rights Division and the command personnel of the National Civil Police held a meeting to evaluate the courses and the tests and agreed to continue the training programme.

125. By order of the Director-General of the National Civil Police, the Guide has been used as a daily working tool for all National Civil Police members. In cooperation with the Office of the Director of the National Civil Police, the United Nations Observer Mission in El Salvador (ONUSAL) will make periodic surveys to verify the situation and to examine the behaviour of members of the National Civil Police in its various delegations, subdelegations and posts.

126. Monitoring of the activities of the National Civil Police and institutional cooperation to support its training and development in the context of the new police doctrine, maintaining respect for human rights and for a State based on rule of law, have taken on particular importance in the present situation. An effective police force is now more important than ever. Its effectiveness depends on the confidence and support of the people, which can be won only in so far as the police force is perceived in its everyday activities as a provider of service to the public rather than an instrument of a repressive and abusive system. This does not, of course, mean the abandonment of vigour in police activity or the adoption of a complacent attitude towards crime. In this context, respect for the law and effectiveness in police activity are two sides of the same coin. There can be no doubt that El Salvador is now building a new police force which can become a model for the entire continent if it continues to correct the shortcomings and problems which have been discovered.

III. CONCLUSIONS AND RECOMMENDATIONS

127. While the general trend of the process has been maintained, the increase in acts of common violence in the country and the clear involvement of members of law-enforcement bodies in criminal acts, together with the impunity which results from the deficit operation of the justice system, are major obstacles to the effective exercise of human rights in El Salvador.

128. Faced with the problem of the lack of public securities, the Government has begun adopting appropriate measures. The President of the Republic has firmly supported the National Civil Police as the only agency legally entrusted with ensuring public security and internal law and order. There has been increased deployment of the National Civil Police. Individuals committed to increasing the efficiency of the National Civil Police have been named to the posts of Deputy Minister of Public Security and Director of the National Civil Police. It has been announced that the demobilization of the National Police will be carried forward, and the Criminal Investigation Section of the National Police was dissolved ahead of schedule. The Division concurs with the view of the President of the Republic that the demobilization of the National Police should be accelerated even further.

129. Although there were fewer complaints received than during earlier periods, many of them involve indications or elements of judgement which make the consideration of possible political motivation unavoidable and which seem to suggest that there are still groups that resort to violence as a means of resolving political conflicts. This is harmful to the peace process and hampers the Government's efforts to consolidate a State based on the rule of law.

130. Despite the remarkable progress made by the armed forces in developing the new military doctrine, the evidence of participation of active-duty military men in criminal acts makes it indispensable to press the investigation and to bring those involved before the courts of ordinary justice.

131. The human rights situation in El Salvador will remain precarious until State institutions are efficient enough to prevent and to punish human rights violations. The impunity of the perpetrators is, in fact, still the main cause of human rights violations in El Salvador. It is therefore essential to accelerate the reform of the judicial system. The new Supreme Court of Justice has the necessary tools for undertaking an internal purge of the Judicial Organ, on the basis of the studies made by the National Council of the Judiciary.

132. The anticipated departure of ONUSAL demonstrates the importance of the work of permanent national bodies such as the Office of the National Counsel for the Defence of Human Rights and non-governmental human rights organizations for the protection and promotion of human rights. It is to be hoped that the Office of the National Counsel will be able to assume the task of active verification fully when ONUSAL terminates its activities.

133. The non-governmental organizations have been adapting their activities to the new situation in the country and have been contributing to the construction of a democratic State, but since human rights violations are not occurring on such a massive scale as in the past, they are finding it difficult to obtain the

funding necessary to their work. An appeal is being made to the international community to assist the non-governmental organizations in playing their role, which is, in a sense, more important than ever.

134. The penitentiary system is experiencing a serious crisis. The prison regime must be modernized as soon as possible, and more resources must be allocated to the problem. It is important to move forward on the adoption of the Prison Act, which has already been submitted to the Legislative Assembly.

135. Some of the recommendations for improving the justice system which were made by the Human Rights Division and the Commission on the Truth are now being put into practice, among them the granting of habeas corpus and the invalidation of extrajudicial confession. It is important that the new Legislative Assembly should ratify the constitutional reforms which are in the process of approval and the pending reforms of secondary legislation.

136. Other recommendations for the process of constitutional reform have not yet been implemented. Of particular importance are the proposal that the National Council of the Judiciary should be granted the power to appoint and dismiss judges, the expansion of authority concerning amparo, the reduction of the maximum period for detentions due to administrative misdemeanours, and the repeal of the Police Act. The Legislative Assembly should take up these matters as soon as possible.

137. As regards the international standards for human rights, the Legislative Assembly ratified only the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; however, serious reservations were expressed regarding the competence of the Committee against Torture to receive complaints concerning systematic violations. Furthermore, El Salvador is the only Central American country that has not recognized the mandatory competence of the Inter-American Court of Human Rights. Among those instruments still pending, ratification of the Additional Protocol to the American Convention on Human Rights relative to Economic, Social and Cultural Rights, of the Optional Protocol to the International Covenant on Civil and Political Rights, and of the American Convention for the Prevention and Punishment of Torture would be particularly important.

Table 3

STATISTICAL ANALYSIS OF TRENDS OVER THE PERIOD MARCH-JUNE 1994

COMPLAINTS DECLARED ADMISSIBLE BY ONUSAL

Complaints declared admissible	March	April	May	June	Total
VIOLATIONS OF THE RIGHT TO LIFE					
Arbitrary executions	9	8	5	6	28
Attempted arbitrary executions	3	4	2	0	9
Death threats	18	19	14	8	59
VIOLATIONS OF THE RIGHT TO INTEGRITY OF PERSON					
Torture	0	0	2	1	3
Ill-treatment	4	6	17	9	36
Excessive use of force	4	3	6	1	14
VIOLATIONS OF THE RIGHT TO SECURITY OF PERSON					
Enforced disappearances	1	0	0	0	1
Abductions	9	4	0	2	15
Other threats	20	16	5	3	44
VIOLATIONS OF DUE PROCESS OF LAW					
PROCEDURAL GUARANTEES					
Right to be tried by a tribunal within a reasonable period of time	2	0	0	1	3
Right to defence	0	2	0	1	3
Right not to be coerced	2	0	1	1	4
Right to judicial review	0	0	0	0	0
RIGHT TO JUSTICE					
Legal obligation of the State to investigate and punish	16	12	10	11	49
Right to compensation	0	0	0	1	1

Complaints declared admissible	March	April	May	June	Total
VIOLATIONS OF THE RIGHT TO PERSONAL FREEDOM					
Arbitrary detentions	7	11	14	7	39
Arbitrary detentions for petty misdemeanours	2	0	2	2	6
Procedural guarantees	1	5	2	5	13
VIOLATIONS OF THE RIGHT TO FREEDOM OF EXPRESSION	1	0	0	0	1
VIOLATIONS OF THE RIGHT TO FREEDOM OF ASSOCIATION					
Right to associate freely	1	0	0	1	2
Freedom of assembly	0	0	0	0	0
Trade union freedom	0	0	1	0	1
VIOLATIONS OF THE RIGHT TO IDENTITY DOCUMENTS					
To obtain personal identification documents	0	0	1	0	1
To obtain civil status documents	0	0	0	0	0
Other	0	0	0	1	1
Total	100	90	82	61	333

Table 4

COMPLAINTS DECLARED ADMISSIBLE BY CATEGORY OF RIGHT VIOLATED

March-June 1994

(Percentages)

Violation	March	April	May	June	Total
Life	30	34.44	25.6	23	28.26
Integrity	8	10	30.5	18	16.625
Security	30	22.22	6.1	8.2	16.63
Due process	20	15.56	13.4	24.6	18.39
Personal freedom	10	17.78	22	23	18.195
Freedom of expression	1	0	0	0	0.25
Freedom of association	1	0	1.2	1.6	0.95
Personal documentation	0	0	1.2	1.6	0.7
Total	100	100	100	100	100

Table 5

PERSONS PRESUMED RESPONSIBLE FOR VIOLATIONS

March-June 1994

Persons presumed responsible	March	April	May	June	Total	Percentage
Members of national police	13	12	14	13	52	15.6
Irregular groups	11	15	2	2	30	9
Persons unknown	18	18	9	9	54	16.2
Members of municipal police	0	1	2	3	6	1.8
Members of National Civil Police	17	23	32	11	83	24.9
Members of armed forces	2	3	2	6	13	3.9
Public prosecutor's office	1	0	0	1	2	0.6
Administration	0	0	0	0	0	0
Judiciary	17	12	7	10	46	13.8
Anti-drug trafficking unit	1	0	0	1	2	0.6
Criminal Investigation Commission	1	0	0	0	1	0.3
FMLN	4	0	0	0	4	1.2
Other	15	6	14	5	40	12
Total	100	90	82	61	333	100